

AGREEMENT

THIS AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2003, by and between the City of Lincoln hereinafter referred to as the "the City," and the County of Lancaster, Nebraska, hereinafter referred to as "the County."

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. § 13-801 *et seq.* (Reissue 1997), permits units of local government in the State of Nebraska to cooperate with other localities on a basis of mutual advantage and thereby provide services in a manner that will best serve local communities; and

WHEREAS, Lancaster County and the City of Lincoln are responsible for providing road improvement and maintenance to the streets and roads located within their respective jurisdictions; and

WHEREAS, the County and the City agree that it is mutually beneficial to open one mile of new road on an alignment generally described as South 98<sup>th</sup> Street between "A" and "O" Streets, as provided in Attachment "A"; and

WHEREAS, the project has been included in the 2003-2008 Fiscal One and Six Year Lancaster County Road and Bridge Improvement Program.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

1) Length. The length of this Agreement shall be from the date of execution until the completion of the above described road project, estimated to be the Spring of 2005.

2) Purpose. The City and County wish to open one mile of new road on an alignment generally described as South 98<sup>th</sup> Street between "A" and "O" Streets, as provided in Attachment "A", which is attached hereto and incorporated by reference. The purpose of this agreement is to provide the preliminary survey work, determination of a road centerline, appraisal and acquisition of roadway right-of-way and responsibility for the costs related to the project.

3) Responsibilities. The County will have the following duties and responsibilities:

- A. The County shall be responsible for the preliminary survey work necessary to establish the appropriate location for the new roadway described herein. The County and City shall work together to determine the road centerline.
- B. The County shall be responsible for the cost of the preliminary survey work necessary to establish the appropriate location for the new roadway.
- C. The County agrees to budget \$125,000 in the 2004 Fiscal budget for the acquisition of the road right-of-way.
- D. The County agrees it shall be responsible for half of the road right-of-way acquisition and other related costs which if above the \$125,000 budgeted shall be due and payable in the 2005 Fiscal year.

The City will have the following responsibilities:

- A. The City shall be responsible for funding the acquisition costs and other costs related to the new road, which exceed the \$125,000 budgeted by the County in the 2004 Fiscal year.
- B. The City agrees that ultimately it shall be responsible for half of the acquisition costs related to the right-of-way. The City agrees to delay billing the County for any acquisition costs above the budgeted amount of \$125,000 until the 2005 Fiscal year.
- C. The City agrees to work with the County in the determination of a road centerline.

4) Compensation. The County agrees to be responsible for the preliminary survey work and related costs. The City and County shall be equally responsible for the cost of the road right-of-way acquisition, which shall include but not be limited to appraisal costs, contract acquisitions and land values. The parties agree to share the cost of acquisition regardless of whether the acquisition is provided by a County or City agency or independent contractor, as long as it is billed pursuant to the terms of this agreement and for this specific road project. The County shall budget \$125,000 in its 2004 Fiscal Budget for payment of the County's share of the acquisition. The City agrees to bill the County its share of the costs which exceed \$125,000 in the 2005 Fiscal year. Compensation shall be paid upon presentment of a statement for reimbursement and documentation that the terms of the agreement have been fulfilled.

Statements will be submitted to support any request for payment prior to any payment for the fulfillment of the terms of this agreement. The parties agree that this agreement does not provide for compensation in the form of a retainer.

5) Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the City shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the City.

6) Assignment. Neither the County nor the City shall assign its duties and responsibilities under this Agreement without the express written permission of the other party to this agreement. It is expressly understood and agreed to by the parties that the City or County may subcontract the services of preliminary survey or road right-of-way acquisition.

7) Hold Harmless. Each party agrees to indemnify and hold harmless to the fullest extent allowed by law, the other party from and against any and all claims, damages, losses, and expenses (including attorneys' fees) arising out of or resulting from its acts and the acts of its agents and employees in performance of this agreement. Further, each party shall maintain a policy or policies of insurance sufficient in coverage and amount to pay any judgments or related expenses resulting from or in conjunction with any such claims. Each party agrees that it will be responsible for its own acts and omissions and the results of its own acts and omissions, and shall not be responsible for the acts or omissions of the other party. The parties agree to assume all risk and liability for any injury to persons or property resulting in any manner from each party's own acts or omissions related to the Agreement, including acts or omissions by each party's own agents or employees related to this Agreement. Liability includes any claims, damages, losses, civil rights liability and expenses (including attorneys' fees) arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever including any bodily injury, sickness, disease, property, including any resulting loss of use.

8) Subcontractors. The parties agree to require any subcontractors, providing services under this agreement, to Indemnify and Hold the other party Harmless to the same extent and as provided in section 7, of this agreement.

9) Severability. If any portion of this Agreement is held invalid, the remainder hereof shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

10) Equal Employment Opportunity. In connection with the carrying out of the activities provided herein, neither the County nor the City shall discriminate against a bidder because of race, color, religion, sex, disability, national origin, age, marital status or receipt of public assistance.

11) Termination. This Agreement may be terminated at any time by either party giving sixty (60) days written notice.

12) The City and County further agree that they shall require their subcontractors, providing services under this agreement, to agree to the following clause by including it in its subcontractor agreements:

Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the City and County and employees of the City and County shall not be deemed to be employees of the Contractor. The Contractor and the City and County shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the City or County's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including, but not limited to, overtime, vacation, retirement benefits, workers' compensation, sick leave or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local and any other payroll taxes with respect to its employees' compensation.

13) The City and the County shall require any contractors and their subcontractors, providing services under this agreement, to agree to the following clause by including it in its subcontract agreements:

Insurance.

Workers' Compensation Insurance

Contractor shall purchase and maintain during the term of this Agreement, Workers' Compensation Insurance, fully insuring its employees as required by law. Said insurance shall be obtained from an insurance company which is authorized to do business in the State of Nebraska.

General Liability Insurance

Contractor shall purchase and maintain during the term of this Agreement, General Liability Insurance, naming and protecting them and the County against claims for damages resulting from (1) bodily injury, including wrongful death, (2) personal injury liability and (3) property damage which may arise from operations under this Agreement whether such operations be by Contractor or any one directly or indirectly employed by them. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

Bodily Injury/Property Damage	\$1,000,000 Each Occurrence \$5,000,000 Aggregate
Personal Injury Damage	\$1,000,000 Each Occurrence
Automotive Liability	\$5,000,000 Combined Single Limit

The Contractor shall not commence work under this Agreement until it has obtained all insurance required under this section and has provided the City and County with a Certificate of Insurance

showing the specific limits of insurance required by this section and showing the City of Lincoln and Lancaster County as additional insured. Such certificate shall specifically state that Insurance policies are to be endorsed to require the insurer to provide the City of Lincoln and Lancaster County thirty (30) days notice of cancellation, non-renewal or any material reduction of insurance coverage.

14) This agreement constitutes the entire agreement between the parties with respect to the subject matter herein and merges all prior discussions between them. It shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by all parties.

EXECUTED by the County this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

County of Lancaster

BY: \_\_\_\_\_

Bernie Heier, Chairman  
Lancaster County Board of  
Commissioners

APPROVED AS TO FORM:

This \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Deputy County Attorney  
for GARY E. LACEY  
County Attorney

EXECUTED by the City this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

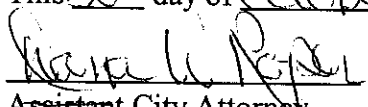
City of Lincoln

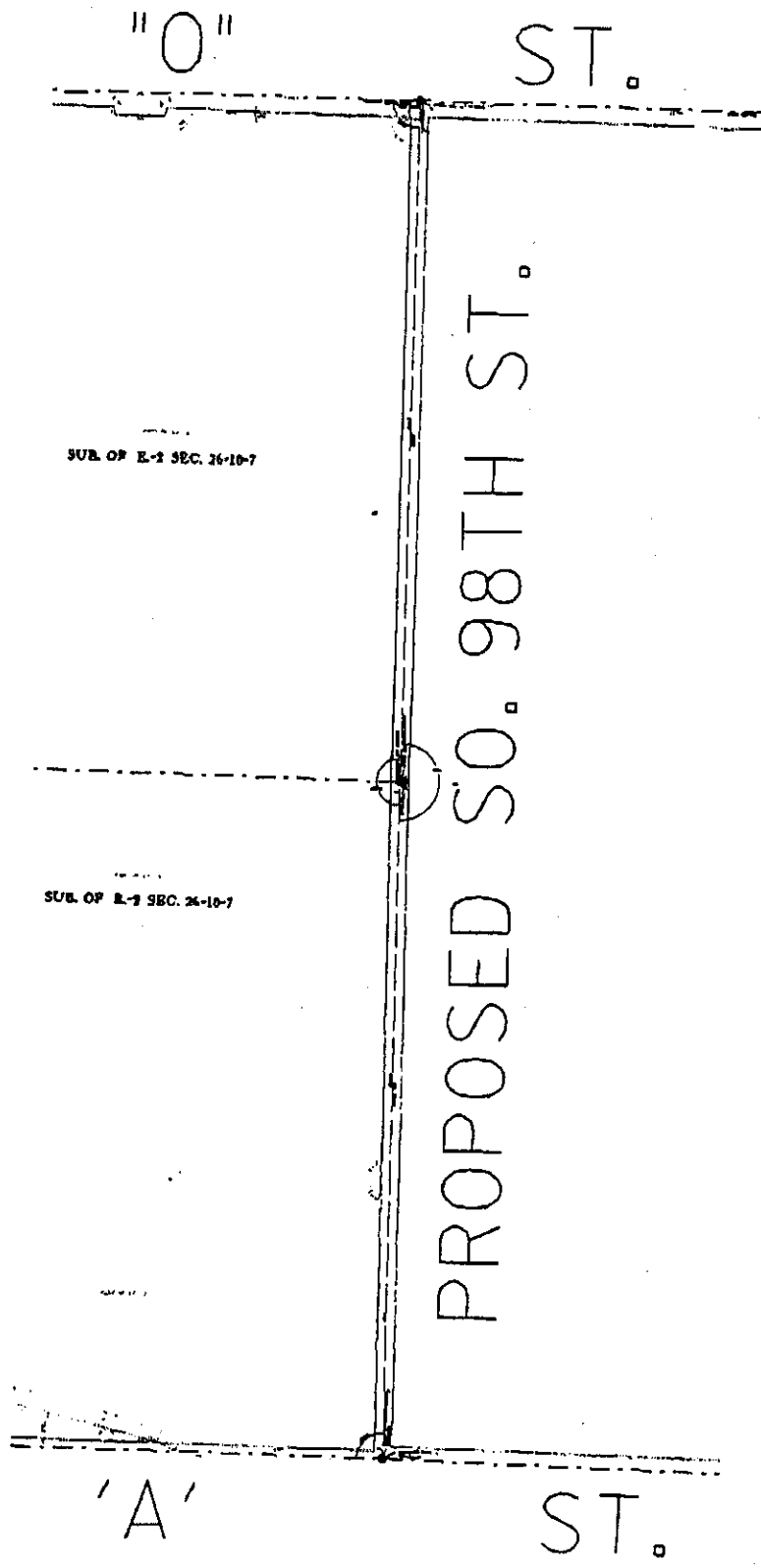
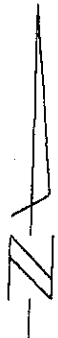
BY: \_\_\_\_\_

Mayor Coleen Seng

APPROVED AS TO FORM:

This 30<sup>th</sup> day of October, 2003.

  
Assistant City Attorney  
for DANA W. ROPER  
City Attorney



ATTACHMENT "A"